

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

THE NEW YORK CITY EMPLOYEES'
RETIREMENT SYSTEM, THE TEACHERS'
RETIREMENT SYSTEM OF THE CITY OF NEW
YORK, THE NEW YORK CITY
POLICE PENSION FUND, THE NEW YORK CITY
FIRE DEPARTMENT PENSION FUND,
THE NEW YORK CITY BOARD OF EDUCATION
RETIREMENT SYSTEM,

Plaintiffs,

v.

TRANSDIGM GROUP, INC.,

Defendant.

18 Civ. 11344 (KPF)

**STIPULATION OF SETTLEMENT
AND DISMISSAL**

WHEREAS, the New York City Employees' Retirement System, Teachers' Retirement System of the City of New York, the New York City Police Pension Fund, the New York City Fire Department Pension Fund, and the New York City Board of Education Retirement System (collectively, "Plaintiffs") filed a complaint on December 5, 2018 alleging that defendant TransDigm Group Inc. ("Defendant") intended to omit Plaintiffs' shareholder proposal ("Proposal") from Defendant's proxy materials for Defendant's 2019 annual shareholder meeting ("Annual Meeting") in violation of Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-8, 17 C.F.R. §240.14a-8 ("Rule 14a-8");

WHEREAS, Plaintiffs' Proposal states:

Greenhouse Gas Emissions Reduction Targets

Resolved: Shareholders request that TransDigm Group, Inc. adopt a policy with time-bound, quantitative, company-wide goals for managing greenhouse gas (GHG) emissions, taking into account the objectives of the Paris Climate Agreement, and report, at

reasonable cost and omitting proprietary information on its plans to achieve these targets.

Supporting Statement: It is appropriate for shareholders to request that TransDigm set goals for managing GHG emissions because such goals help to mitigate a critically important issue for civil society and businesses -- climate change.

Scientists expect that failure to mitigate climate change will lead to additional sea level rise, more extreme weather, mass migration, and public health impacts from heat waves, fires, and changing disease vectors. In one shocking worst case scenario -- a 4 degree centigrade increase in average global temperatures -- the World Bank has stated it may not be possible for humanity to adapt.

To manage the risks posed by climate change, representatives from approximately 195 countries adopted the Paris Climate Agreement, which aims to limit the increase in global average temperature -- and the most devastating social impacts of climate change -- by reducing GHG emissions. Transitioning to the low-carbon future envisioned in the Accord is likely to fundamentally transform the global economy and the competitive environment in which all corporations operate.

This proposal requests adoption of a high level policy with goals but leaves the nature, timing and level of the goals entirely up to Transdigm's discretion. The proposal is not an attempt to micromanage but to set a guiding direction that can be assessed by shareholders.

The GHG management goals requested are intended to be integrated with other the goals the company has adopted. Well over 60% of Fortune 100 companies have already set GHG emissions targets, presumably while taking into consideration other corporate goals and policies.¹ Operating a company by striving to meet a variety of specific goals is a standard business practice.

Examples of companies with GHG reduction goals include: Walmart, Apple, Johnson & Johnson, GM, AT&T, Procter & Gamble, JP Morgan Chase, McDonald's and Microsoft.²

¹ https://c402277.ssl.cf1.rackcdn.com/publications/1049/files/original/Power_Foward_3.0_-_April_2017_-_Digital_Second_Final.pdf?1493325339, p 2

² https://c402277.ssl.cf1.rackcdn.com/publications/1049/files/original/Power_Foward_3.0_-_April_2017_-_Digital_Second_Final.pdf?1493325339, P. 40

Transdigm's peers in the aerospace and defense industry that have set GHG management goals include United Technologies, Boeing, Lockheed Martin and Northrop Grumman.

Large institutional investors such as BlackRock and State Street Global Advisors have publicly and privately called on companies to address climate change. A State Street white paper states: "We view establishing company-specific GHG emissions targets as one of the most important steps in managing climate risk."³ Investors are concerned about climate impacts on individual companies as well as portfolio-wide risks related to changing regulations and costs associated with extreme weather events.

There are numerous cost-effective ways for companies to reduce GHG emissions and help protect society from the worst impacts of climate change while reaping financial benefits;

WHEREAS, Plaintiffs sought: (1) a declaration that Defendant's decision to omit Plaintiffs' Proposal from its proxy materials for the Annual Meeting violated Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-8, (2) an injunction (a) prohibiting Defendant from soliciting shareholder proxies for the Annual Meeting without informing shareholders of the Proposal and (b) requiring the inclusion of the Proposal in Defendant's proxy materials, (3) their costs and disbursements of this action, including reasonable attorneys' fees, and (4) any other relief the Court deemed just and proper;

WHEREAS, by letter dated December 28, 2018, Defendant advised the Division of Corporation Finance of the Securities and Exchange Commission that it withdraws its November 9, 2018 request for a no-action determination from the Division and that it will be including the Proposal in its 2019 proxy materials;

WHEREAS, the parties now wish to discontinue this litigation;

³ <https://www.ssga.com/investment-topics/environmental-social-governance/2017/perspectives-on-effective-climate-change-disclosure.pdf>, p. 2.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties and/or their respective counsel, as follows:

1. The parties agree that the above-captioned action is dismissed and discontinued without prejudice pursuant to Federal Rule of Civil Procedure 41.

2. In consideration of the dismissal of this above-captioned action, Defendant agrees that it will include the Plaintiffs' Proposal in its proxy materials for the 2019 Annual Meeting.

3. The parties agree that each party shall bear its own legal and other costs (including attorneys' fees) incurred in connection with this matter, including the preparation and performance of this stipulation ("Stipulation") and any communications with or submissions to the Division or this Court.

4. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to or arising under this Stipulation is the United States District Court for the Southern District of New York.

5. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all parties to this Stipulation and is not be construed *contra proferentem* against any party in any subsequent dispute.

6. This Stipulation constitutes the complete agreement between the parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the parties.

7. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and entities listed below.

8. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Emails that attach signatures in PDF form constitute acceptable, binding signatures for purposes of this Stipulation.

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Plaintiffs
100 Church Street, Room 20-87
New York, NY 10007
(212) 356-4050

By: 
Inga Van Eysden
Assistant Corporation Counsel

BAKER HOSTETLER LLP
Attorney for Defendant
45 Rockefeller Plaza
New York, NY 10111
(212) 589-4200

By: 
Jessie M. Gabriel

SO ORDERED.

Dated: January 18, 2019
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE